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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA

Petitioner,

v.

FEDERICO RIOS, a minor, etc.,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California

EVELLE J. YOUNGER
Attorney General of the State of California

L. STEPHEN PORTER
Deputy Attorney General

VICTOR D. SONENBERG
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-3600

Attorneys for Petitioner

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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Petitioner Department of Motor Vehicles of the State of California respectfully prays that a writ of certiorari issue to review the judgment, orders and opinion of the California Supreme Court issued on August 15, 1972.

OPINION BELOW

The opinion of the California Supreme Court, captioned *Federico Rios, a Minor, etc.*, petitioner v. *Robert C. Cozens, as Director, etc., et al.*, respondents, is reported at 7 Cal. 3d 792; 499 P.2d 979 (1972), and is also set out on pages 1-10 of the appendix attached to this petition. Citations of this opinion hereafter shall refer to the pages as they are numbered in the appendix.

JURISDICTION

The judgment of the California Supreme Court was entered August 15, 1972, and this petition for certiorari has been filed within 90 days of that date.

This Court's jurisdiction is invoked pursuant to the provisions of 28 U.S.C. section 1257(3).

QUESTIONS PRESENTED

Whether the Department of Motor Vehicles' determination, under California's financial responsibility law, of the issue of culpability may be made on the basis of written submissions, or whether this Court's decision in *Bell v. Burson,* 402 U.S. 535 (1971), requires such a determination to be made on the basis of a personal adversary hearing prior to the suspension of one's driver's license.

STATUTORY PROVISIONS INVOLVED

California Vehicle Code sections 16000-16110, which is that portion of California's financial responsibility law relating to the posting of security following an automobile accident. The pertinent sections of the statute are set out on pages 14-27 of the appendix.

STATEMENT OF THE CASE

Since 1969 (subsequent to the decision of the California Supreme Court in *Orr v. Superior Court,* 71 Cal. 2d 220; 454 P.2d 712 (1969)), the California Department of Motor Vehicles, in implementing the State's financial responsibility law (Calif. Veh. Code §§ 16000 *et seq.,* see appendix, pp. 14-27), had made a determination of "possible culpability" based on the written submissions of the parties to the accident, prior to requiring the uninsured driver to post security. On December 3, 1971, a petition for writ of mandate was filed directly with the California Supreme

Court by Federico Rios (hereafter respondent) praying that that Court issue a writ commanding the Department to refrain from implementing the statute without first providing the affected licensees the opportunity for a personal adversary hearing on the question of possible culpability. On December 6, 1971, the California Supreme Court issued an order transferring the matter to the California Court of Appeal of the Third Appellate District.

On January 6, 1972, said Court of Appeal issued, without opinion, an order denying the petition for writ of mandate.

On January 17, 1972, respondent petitioned the California Supreme Court for hearing to review the Court of Appeal's order denying the writ of mandate.

On February 10, 1972, the California Supreme Court issued its order granting the petition for hearing.

On August 15, 1972, the decision and judgment of the California Supreme Court was entered and filed (appendix, pp. 1-10) which granted the petition for writ of mandate and ordered the Department to grant the respondent a hearing on the suspension of his license (appendix, p. 10). The decision held that the procedure followed by California in implementing its financial responsibility law "does not comply with the command of *Bell v. Burson*, . . . 402 U.S. 535, that a hearing be granted prior to license suspension for a failure to comply with the financial responsibility law" (appendix, p. 6).

On August 22, 1972, the petitioner herein filed with the California Supreme Court an application for a partial stay, pending review by this Court. On August 30, 1972, said application was denied.

Review of the aforesaid decision of the California Supreme Court filed and entered on August 15, 1972, is now being sought by this petition for certiorari.

REASONS FOR GRANTING THE WRIT

I. The Issue in This Case: The Ability of an Administrative Agency to Make Certain Determinations on the Basis of Written Submissions, as Opposed to a Personal Hearing, Clearly Involves Questions of Fundamental Significance to the Many Agencies Implementing Complex Governmental Programs, and to Those Affected by Those Programs.

A. THIS COURT HAS RECOGNIZED THAT THE SAME ISSUES, AS ARE INVOLVED IN THE PRESENT CASE, CONSTITUTE A "SUBSTANTIAL" FEDERAL QUESTION.

In *Jennings v. Mahoney*, 404 U.S. 25 (1971), this Court had before it the very question at issue in the present case: whether a determination that there was a "reasonable possibility" of fault, could be made on the basis of accident reports, as opposed to a personal hearing. (*id.*, at 25-26). This question was characterized by this Court as "*plainly a substantial question* . . . ." (Emphasis added. *Id.* at 26).

The aspect in *Jennings* which rendered a resolution of the question inappropriate; *viz.*, the fact that the State court prior to suspension had afforded the licensee a personal hearing with "the opportunity to present evidence and cross-examine witnesses" (*id.*, at 26-27), is not present in this case. Under California law, such a hearing in the reviewing court is not available (*Rios v. Cozens*, Appendix pp. 6-7, n. 5),[1] nor has one in fact been held.

It is thus respectfully submitted that this case presents the question in a form now appropriate for review by this Court.

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1. *Rios v. Cozens*, the decision of the Court below, is reported at 7 Cal.3d 792; 499 P.2d 979 (1972). This decision is set out on pages 1-10 of the appendix attached to this petition. References to *Rios v. Cozens* will be to the pages in the appendix.

B. CONTRA TO THE DECISION OF THIS COURT IN BELL V. BURSON, THE COURT BELOW HAS IN EFFECT CONCLUDED THAT A FULL ADJUDICATION ON THE QUESTION OF LIABILITY IS REQUIRED.

1. A Hearing Need Not Cover Questions Not Relevant Under the Statute in Question.

Acknowledging the right to a hearing under the financial responsibility laws, still leaves unanswered the critical question: what issues must such a hearing cover?

The answer which virtually appears self-evident is: those issues necessary to determine whether one falls into the class specified by the statute. See generally 1 Davis, *Administrative Law Treatise*, § 7.04. If a statutory class is reasonably related to a proper governmental purpose (see *Morey v. Doud*, 354 U.S. 457, 465-466 (1957)), due process should certainly require no more than the necessity of a hearing limited to the issues relevant under the statute in question. See *Producers Livestock Marketing Ass'n v. United States*, 241 F.2d 192, 196 (1957). *Cert. granted*. 353 U.S. 982. The purpose of the financial responsibility law "is to obtain security from which to pay any judgments against the licensee resulting from the accident." *Bell v. Burson, supra*, 402 U.S. at 540.

The class delineated by the financial responsibility law is: any uninsured driver involved in an accident and against whom there is a sworn report which would support the finding of a "reasonable possibility of a judgment" against such driver. *Orr v. Superior Court*, 71 Cal.2d 220, 227-228; 454 P.2d 712, 716-717 (1969). This delineated class is clearly relevant to the statutory purpose of affording security for potential judgments, even though it does not comprehend a determination of the truth or falsity of the statements relating to fault.

2. The Court Below Erroneously Held That Issues Beyond the Statutory Class Had to Be Covered, and in Effect Required a Full Adjudication of the Question of Fault.

The court below in no way purported to demonstrate that the classification in question was not sufficiently relevant to the statutory purpose. Nonetheless, it rejected reliance upon written submissions, and mandated a hearing on the issue of fault, consisting of the personal presentation of witnesses and evidence and the opportunity for rebuttal. *Rios v. Cozens, supra,* pp. 6-7, n. 5, pp. 8-9. See *Goldberg v. Kelly,* 397 U.S. 254, 267-268 (1970). Thus, the Court in effect has expanded the class, and required a "full adjudication of the question of liability," as a prerequisite to action by the Department of Motor Vehicles. But this Court in *Bell* has expressly enunciated a contrary declaration: "Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. That adjudication can only be made in litigation between the parties involved in the accident." *Bell v. Burson, supra,* 402 U.S. at 540.

3. The Court Below Failed to Recognize the Preliminary or Ancillary Nature of the Proceedings in Question.

In noting that the "full adjudication of the question . . . can only be made in litigation between the parties . . . ." this Court has articulated the significance of the *preliminary* nature of the proceedings in question here. On the other hand, the Court below in compelling a personal adversary hearing appears to have disregarded the significance of the proceeding's *preliminary* quality. This disregard is reflected in its reliance on *Goldberg v. Kelly,* 397 U.S. 254 (1970), for the proposition that written presentations are insufficient. *Rios v. Cozens, supra,* p. 9. However, the inapplicability of *Goldberg* to the present situation lies in the fact that *Goldberg* involved the adjudication of the

ultimate questions involved, rather than, as in the present case, a determination of preliminary or ancillary questions.

Our adjudicatory system has traditionally recognized the technique of making preliminary factual determinations in ancillary proceedings, on the basis of written submissions, leaving the resolution of factual conflicts for the ultimate trial on the merits; *e.g.*, proceedings on demurrers or motions to dismiss where the court does not conduct an adversary hearing to resolve conflicts in the evidence, but merely decides whether the alleged evidence, if believed at a later trial, would legally support the plaintiff's claim. *Madison v. Purdy*, 410 F.2d 99, 100-101 (1969). See also 1 Davis, *Administrative Law Treatise*, § 7.01, p. 410. It is thus these types of ancillary procedures, rather than the ultimate determinations dealt with in *Goldberg*, which affords the appropriate analogies to the present case.[2]

Measured against such analogies, it can be seen that California's procedures under the financial responsibility statutes afford a fair, logically relevant, *i.e.*, "meaningful" means for determining whether a licensee should be required to post a bond to provide security in the event a judgment is obtained.

C. CALIFORNIA'S PROCEDURES PROVIDE A MEANINGFUL FORUM FOR THE DETERMINATION OF THE ISSUE OF "POSSIBLE" CULPABILITY.

The records of the Department cogently demonstrate that the law, as construed in *Orr v. Superior Court*, *supra*, 71 Cal. 2d 220, 454 P. 2d 712, has been implemented in a signif-

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2. Nominally the procedures dealt within *Goldberg* might be termed "preliminary" because a "post-termination" hearing was also available (397 U.S. at 259-260). However such procedures were, in substance, final proceedings in the sense that they determined the questions relating to the ultimate decision of whether welfare assistance should be terminated (*id.*, 258-259). They were not determining ancillary questions, such as whether security should be posted *prior* to the trial on the ultimate question, or such as the resolution of objections to pleadings, *prior* to such trial.

icantly "meaningful" manner. In the Director's monthly report of December 1968, it is noted on page 11 of the appendix attached hereto,[3] that during 1968 (the last full year *prior* to the Department's considering fault as required by *Orr*), there were 97,829 orders of suspension issued out of a total of 630,097 accident reports received, or a suspension rate of about 15%. (Suspensions were occurring at approximately this rate the previous year. Director's Report, December 1968.) Comparing this to the figures for 1970 (the first full year *after* the *Orr* decision), it can be seen that the percentage rate of suspensions dropped to about 9%, *i.e.*, about a 40% drop in such rate (Director's Report, December 1970), and suspensions at approximately the same rate have continued through 1971 (Director's Report, December 1971). It should also be noted that this significant drop in the suspension rate has occurred in spite of the fact that the Court in *Orr* ruled that "the department need not decide as between conflicting versions of the accident whether the driver was in fact at fault . . . [nor] is the department called upon to make sophisticated judgments upon any claims of contributory negligence or of last clear chance etc. which may arise . . . ." *Orr v. Superior Court, supra,* 71 Cal. 2d at 227; 454 P. 2d at 717. Hence, it is apparent that the Department is diligently examining the reports and making considered determinations upon the question of "possible fault."

Here it should be noted that there is now no doubt that the driver is entitled, *before the Department acts,* to review and examine all of these reports submitted against him. *Rios v. Cozens,* p. 8.

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3. The portions of the Director's monthly reports of December 1967, December 1968, December 1970, and December 1971, dealing with the Financial Responsibility Law have been set out in pages 11-13 of the appendix to this petition.

Thus the driver is afforded ample opportunity to rebut "errors or misstatements" and to supply any "pertinent matters" omitted from the opposing reports. (See *Rios v. Cozens*, pp. 6-7, n. 5).

It is difficult to see how these procedures, in view of the opportunities they afford the driver, and the frequency of results favorable to him, could fail to be denominated as "meaningful."

D. THERE IS A SERIOUS QUESTION AS TO WHETHER SOCIAL COSTS OF AFFORDING AN ADVERSARY HEARING IN ALL FINANCIAL RESPONSIBILITY CASES OUTWEIGHS THE SOCIAL VALUE OF THE PROGRAM AND THUS, AS A PRACTICAL MATTER, FORECLOSE THIS TYPE OF SOLUTION TO THE PROBLEM OF ACCIDENT COMPENSATION.

The Department of Motor Vehicles' monthly reports (set out in pages 11-13 of the appendix to this brief) indicate that the Department issues over 4,000 suspension orders a month under the financial responsibility law. If only one-third of those receiving such orders were to request a hearing, this one department would under this single statute be conducting over 12,000 adversary hearings a year, involving what could be fairly extended factual presentations. The expenditure of governmental time and resources necessary, if such hearings were required, would be obviously great. But furthermore, the injured party would be required to appear in order to afford the opportunity for confrontation and cross-examination. See *Goldberg v. Kelly, supra*, 397 U.S. at 267-268.

Thus not only the State but the injured party would be subjected to a significantly demanding procedure for merely the ancillary purpose of acquiring security, in case the matter might go to formal trial, and in case a judgment might be awarded. It becomes apparent then that the personal and governmental costs for the amount of value the law secures for society could be exorbitant. And whereas in theory such costs could be met, as a practical matter,

other demands on social resources make such expenditures undesirable in view of their disproportion to the value they provide.

Financial responsibility laws are clearly the *product of an extensive process of legislative balancing of interests.* Compulsory insurance has an impact upon the poor. On the other hand, allowing an uninsured motorist to drive has an impact on those (who also might be poor) who are injured in traffic. Whatever the legislative choice, friction or distress to some would inevitably result. But the choice made here is at least a good faith effort to afford *a solution to a formidable problem*: the compensation of accident victims.

This case then appears to raise a transcending issue: the amount of flexibility, the degree of adaptability a society has in resolving its significant problems *through the mechanism of government.* To the extent that *alternatives are closed,* or the *social costs of such alternatives become infeasible,* government, as a problem-solving tool, to that extent becomes less refined, less effective.

Of course, effectiveness in meeting social problems cannot of itself afford a justification for the abandonment of constitutional values, but what we are earnestly questioning here is whether the Constitution delimits the range of governmental response to social need, to such an extent as to foreclose a technique or procedure which is so rationally configured to the precise problem, and which so meaningfully affords those affected, the ability to procure a just result.

We perceive in this Court's declarations in such cases as *Richardson v. Perales,* 402 U.S. 389, 410 (1971),[4] and *Rich-*

4. "Neither are we persuaded by the advocate-judge-multiple hat suggestion. It assumes too much and would bring down too many procedures designed, and working well, for a governmental structure of great and growing complexity."

ardson v. Wright, 405 U.S. 208, 209 (1972),[5] a disposition to permit a reasonable latitude to the administrative process to meet the enormously complex requirements of our present society. We would most respectfully submit that such a disposition should countenance the eminently fair procedures at issue here.

II. The California Department of Motor Vehicles Is Now Subject to Two Conflicting Decisions.

On July 26, 1971, a three-judge Federal District Court for the Northern District of California issued a decision in the case of *Rivas v. Cozens* (#70 2554). In this decision (a copy of which is set out on pp. 28-30 of the appendix attached to this petition), the Court held that California's procedures under the financial responsibility law comported with the requirements of due process, as enunciated in *Bell v. Burson.* This decision was appealed to this Court where the matter is presently pending. Thus by virtue of the California Supreme Court's subsequent decision in the present case, there are two decisions directly binding on the Department, dealing with precisely the same issues, and reaching directly contrary results. Should this Court not dispose of both of those cases with a single unifying decision, the dilemma confronting the Department would indeed be formidable.

This conflict thus presents a most compelling reason for this Court to grant the present petition for certiorari.

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5. "In the context of a comprehensive complex administrative program, the administrative process must have a reasonable opportunity to evolve procedures to meet needs as they arise."

CONCLUSION

For the reasons stated above, it is respectfully submitted that a writ of certiorari should issue to review the decision of the California Supreme Court.

Dated: November 2, 1972

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the
State of California

L. STEPHEN PORTER
Deputy Attorney General

VICTOR D. SONENBERG
Deputy Attorney General

Attorneys for Petitioner

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Appendix A

In the Supreme Court of the State of California in Bank

Filed Aug. 15, 1972, G. E. Bishel, Clerk
Sac. 7916

Federico Rios, a Minor, etc., *Petitioner,*

v.

Robert C. Cozens, as Director, etc., et al., *Respondents.*

Under the financial responsibility laws (Veh. Code, §§ 16000-16563)[1] the Department of Motor Vehicles (hereinafter the department) will suspend the license of a driver who is involved in an automobile accident which has resulted in bodily injury or property damage in excess of $200 unless he either deposits security with the department sufficient in the opinion of the department to satisfy any final judgment against him up to a stated maximum or establishes his exemption from the security requirement by one of several methods, such as by showing that he was insured at the time of the accident.[2] However, as a condition of the suspension, the department must make a determination that there is a reasonable possibility that a judgment may be recovered against the driver, based upon his potential culpability. (Orr v. Superior Court (1969) 71 Cal.2d 220, 227-228.)

1. All code references are to the Vehicle Code.

2. In addition to suspension of the license of the driver of a vehicle involved in an accident, the financial responsibility law provides that the owner of the car must surrender his registration card and license plates to the department and store the car at his own expense if neither he nor the person who drove the car with his permission can comply with the security deposit requirement or establish an exemption. (§ 16100 et seq.)

The question involved in this proceeding is whether the driver is entitled to a hearing on the issue of his potential culpability prior to the suspension of his license or whether the department may make its determination, as it now does, merely on the basis of written accident reports which the persons involved in the accident are required to file (§ 16000) without affording the driver an opportunity to personally appear. We conclude that the determination of possible culpability by the department without affording the licensee an opportunity for a hearing does not comply with the requirements of due process, in view of the United States Supreme Court decisions in Bell v. Burson (1971) 402 U.S. 535 and Jennings v. Mahoney (1971) 404 U.S. 25.

Petitioner is a minor who was involved in an automobile accident on March 18, 1971. The driver of the other vehicle in the accident filed a report with the department claiming that he had incurred property damage of $260. Petitioner also filed an accident report. The department apparently on the basis of these reports, found there was a reasonable possibility that a judgment might be recovered against petitioner as a result of the accident. Since petitioner was uninsured and could not deposit security, his license was suspended. He asserted that he was not responsible for the accident and demanded a hearing to determine whether there was any likelihood that he would be found liable.

Upon the refusal of the department to grant a hearing, he filed a petition for a writ of mandate in an appellate court through his guardian ad litem. The petition seeks, on behalf of petitioner and others similarly situated, to compel respondents, the department and its director, to revoke the order of suspension issued to petitioner and others whose licenses were suspended without hearing, and to afford them notice and an opportunity to be heard on the question of their possible culpability.

Petitioner relies on numerous recent cases in which the United States Supreme Court and this court have recognized that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest. (Goldberg v. Kelly (1970) 397 U.S. 254, 266; Sniadach v. Family Finance Corp. (1969) 395 U.S. 337, 342; Randone v. Appellate Department (1971) 5 Cal.3d 536, 547.) This principle is applicable to a plethora of vital personal and property rights (see Randone v. Appellate Department, 5 Cal.3d 536, 548, fn. 8), but it has most frequently been applied in this state to invalidate statutes affording a creditor prejudgment remedies against a debtor without prior notice or hearing (see, e.g., Blair v. Pitchess (1971) 5 Cal.3d 258; McCallop v. Carberry (1970) 1 Cal.3d 903; Cline v. Credit Bureau of Santa Clara Valley (1970) 1 Cal.3d 908).

The rule explicated in the foregoing cases is applicable to the instant circumstances. A person's interest in the retention of his driver's license and in the use of his motor vehicle represents a sufficiently important benefit to justify the requirement that he be accorded a hearing, before he is deprived of those rights, to determine whether there is a reasonable possibility that a judgment will be recovered against him.

Petitioner emphasizes that the rural and urban poor, who cannot afford to purchase insurance or to post security, are frequently faced with license suspension under the financial responsibility law, and that a person deprived of the right to drive may forfeit his employment and suffer other disabilities. If there had been any lingering doubt about the importance of the right to a driver's license, it has been dispelled by Bell v. Burson, supra, 402 U.S. 535, in which the court stated, "Once licenses are issued, as in petitioner's case, their continued possession may become essential in

the pursuance of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees." (402 U.S. at p. 539.)

We observe, as a second factor justifying a pre-suspension hearing, that the primary purpose of the financial responsibility law is not to assure that careless drivers are denied the use of the highways—since the most grossly negligent drivers who can post security or are exempt from complying with the requirement may retain their licenses—but, rather, to afford monetary protection to those who suffer injury or property damage by virtue of the carelessness of financially irresponsible drivers. (Barrera v. State Farm Mut. Automobile Ins. Co. (1969) 71 Cal.2d 659, 671.) We do not denigrate the desirability of making whole the victims of automobile accidents. But viewed in this economic context, the purpose of the statutes under consideration bears a remarkable relationship to prejudgment creditor's remedies and therefore does not justify a difference in treatment with regard to the right to a presuspension hearing.

Nevertheless, respondents argue, this court decided in Escobedo v. State of California (1950) 35 Cal.2d 870, 876-877 and Orr v. Superior Court, supra, 71 Cal.2d 220, 224-225, that due process is not violated by the suspension of a license without a prior hearing if the department's action is subject to subsequent judicial review.

Two years after our decision in Orr v. Superior Court, supra, 71 Cal.2d 220, the United States Supreme Court heard Bell v. Burson, supra, 402 U.S. 535, in which the precise question was whether the State of Georgia could validly suspend the driver's license of an uninsured motorist who could not post security without affording him a hearing prior to revocation on the question of his responsibility for the mishap. The high court determined that a driver may

not constitutionally be deprived of his license without a prior hearing to determine whether there is a reasonable possibility that a judgment would be rendered against him as a result of the accident. Insofar as a determination of possible fault is required before suspension our earlier opinions in Esobedo v. State of California, supra, 35 Cal.2d 870 and Orr v. Superior Court, supra, 71 Cal.2d 220, are consistent with the principles of *Bell*.

The significance of *Bell*, however, is that the decision not only requires a prior determination of culpability as a condition of suspension but that it leaves no doubt such a determination must be made in the context of a hearing. Georgia actually provided a hearing prior to suspension, but the proceeding was confined to such questions as whether the driver was in fact involved in the accident and whether he came within any of the statutory exemptions. The high court held that in providing a forum to decide the question of possible liability Georgia could elect to include this issue at the hearing already provided by its laws (402 U.S. at pp. 542-543), that the additional expense to the state was not a sufficient reason to deny a hearing (402 U.S. at p. 540), and that the hearing required by due process must be meaningful (402 U.S. at pp. 541-542). The opinion concludes that the failure of Georgia's statutory scheme to afford the petitioner a hearing prior to suspension on the question of liability denied him due process of law.

We are called upon, then, to examine the procedure followed in this state to determine if it satisfies the requirements of Bell v. Burson, supra, 402 U.S. 535. Under our statutes, as stated above, any driver who is involved in an automobile accident which results in bodily injury or in property damage in excess of $200 must file a written accident report with the department within 15 days after the

mishap. (§ 16000.)[3] The report contains an account of the driver's version of the accident, as well as information indicating whether he was insured, and estimating the amount of damage incurred. The department makes its determination of possible liability from the substance of these reports. A licensee is not entitled to a personal hearing, and it is not even clear that he is permitted, prior to suspension, to examine the information upon which the department has based its decision.[4]

We conclude that this procedure does not comply with the command of Bell v. Burson, supra, 402 U.S. 535, that a hearing be granted prior to license suspension for a failure to comply with the financial responsibility law.[5] In

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3. Section 40833 provides that neither this report nor the department's action thereon shall be referred to in any way or be admissible as evidence of the negligence or due care of any party at the trial of any action at law to recover damages.

4. According to petitioner, it is the department's policy to refuse to reveal the contents of the opposing driver's report unless and until a court action is filed seeking review of the suspension. The Attorney General, representing the department, acknowledges that this has been the department's policy in the past and states that it was due to a misunderstanding of the law. This lapse has now been corrected, it is asserted, and orders have been issued to department employees that a driver involved in an accident is entitled to see the reports filed by other parties and witnesses prior to the time he files an *action for court review*. Although this policy statement does not provide that a driver threatened with suspension may review the evidence submitted to the department prior to the effective date of *suspension by the department*, we assume that such is the intent of the order, however inartfully drawn, in view of the Attorney General's concession in his brief that it would be "unthinkable" to permit an agency to base its decision upon evidence not disclosed to the affected party.

5. Petitioner asserts that the department's procedure provides him with no hearing whatever. He states that because the department is required to decide only whether it is reasonably possible that he was liable for the accident, almost any discrepancy between opposing reports would justify a decision against him. The others involved in the accident may omit pertinent matters or may simply falsify their reports in an attempt to force petitioner to pay their claims of damage or suffer the suspension of his license. If he is not afforded the opportunity to challenge these errors or misstatements

Jennings v. Mahoney, supra, 404 U.S. 25, decided a few months after *Bell*, the appellant challenged Utah's procedure for determining whether her driver's license should be suspended under that state's financial responsibility law. There, as here, the issue of possible liability for her accident was determined from the accident reports filed with the appropriate department, and the motorist was not given an opportunity to offer evidence and cross-examine witnesses. It was held that there was "plainly a substantial question whether the Utah statutory scheme on its face affords the procedural due process required by *Bell v. Burson*". (404 U.S. at p. 26.) However, the Supreme Court did not find the issue ripe for decision since the trial court, apparently doubtful of the due process qualities of the administrative proceedings, had stayed the suspension order and conducted a full judicial evidentiary hearing on the propriety of the suspension.[6] At least two jurisdictions have interpreted *Bell* as imposing a requirement for a hearing prior to suspension under the financial responsibility law. (Pollion v. Lewis (N.D.Ill. 1971) 332 F.Supp. 777; MacBeth v. State of Utah (C.D.Utah 1971) 332 F. Supp. 1191.)

Respondents do not seriously contend that the procedure followed by the department constitutes a hearing on the

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at a hearing before the department he is forever precluded from a meaningful opportunity to defend his version of the accident to avoid a suspension. He is not entitled to a trial de novo even if he seeks court review of the department's determination since on review a court must rely solely upon evidence submitted to the department. (Orr v. Superior Court, supra, 71 Cal.2d 220, 228.)

6. Richardson v. Wright (1972) 405 U.S. 208 is not helpful. Faced squarely with the issue of the right to an oral presentation before loss of welfare benefits, the court decided, in view of new departmental regulations, that "the appropriate course is to withhold judicial action pending reprocessing, under the new regulations, of the determinations here in dispute." The dissents of Justices Brennan, Douglas, and Marshall to the order stressed the continued viability of Goldberg v. Kelly, supra, 397 U.S. 254.

issue of possible culpability. They assert, however, that because the scope of the determination to be made by the department is restricted to whether there is credible evidence of a reasonable possibility of the driver's culpability and the question of actual fault is not in issue, it is sufficient if the department makes its determination on the basis of the written reports.

This posture is in confiict with both Bell v. Burson, supra, 402 U.S. 535, and Jennings v. Mahoney, supra, 404 U.S. 25. Manifestly that the department is required only to decide whether there is a reasonable possibility of a judgment against the driver does not render a hearing inconsequential. Certainly it is not inconceivable that a licensee may be able to demonstrate to the department, if given the opportunity to do so at a hearing, that there is no reasonable possibility that a judgment will be rendered against him.[7]

It necessarily follows that Escobedo v. State of California, supra, 35 Cal.2d 870, and Orr v. Superior Court, supra, 71 Cal.2d 220, are overruled insofar as they hold that a licensee is not entitled to a hearing, prior to the suspension of his license, to determine whether there is a reasonable possibility that a judgment may be recovered against him. We hold that a hearing is required and that at such a hearing the licensee is entitled to review the reports or other evidence upon which the department contemplates determining that he is possibly responsible for the accident, and to present reports or testimony to establish his claim of nonculpability, all within reasonable due process procedures which the department may employ.

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7. Respondents place great reliance upon Rivas v. Cozens (N.D. Cal. 1971) 327 F.Supp. 867, which was reconsidered in a memorandum decision not published in the reports. Although the district court in its memorandum decision found the California procedure to be in conformity with *Bell*, that decision was rendered prior to the filing of the Supreme Court's opinion in *Jennings*, and we do not find the district court's reasoning to be persuasive.

The licensee must be afforded the opportunity to make his presentation personally rather than in writing, under the holding of the United States Supreme Court in Goldberg v. Kelly, supra, 397 U.S. 254, 268-269. In *Goldberg* it was held that the New York Department of Social Services must permit a welfare recipient to appear personally at a hearing prior to the termination of public assistance payments. The high court reasoned (inter alia) that the opportunity to make a written presentation was insufficient because many recipients do not possess the educational attainment necessary to write effectively and would find it difficult to obtain professional assistance. The same rationale is applicable to the situation involved in the present case. Many persons threatened with license suspension lack the ability to make an adequate written presentation of their position to the department and lack the resources to obtain professional help to forcefully prepare their assertions.

Petitioner is entitled to a writ of mandate commanding respondents to revoke the order suspending his license and to provide him with an oportunity for a hearing. He also seeks to compel respondents to reinstate the licenses of those persons whose driving privileges were previously suspended under the financial responsibility law, until respondents grant them a hearing on the issue of their possible culpability. We do not deem it necessary to require respondents to vacate suspension orders previously issued, other than the order issued to petitioner. However, those whose licenses are currently under suspension because of their failure to comply with the requirements of the financial responsibility law are entitled to a hearing if they so request.

Finally, petitioner prays for damages allegedly suffered as the result of the illegal suspension of his license. He cites no authority and has presented neither evidence nor argument to justify an award of damages in this mandamus proceeding. The denial of a damage award is proper.

Let a writ of mandate issue directing respondents to revoke the order suspending petitioner's license and to provide petitioner, upon due notice, a hearing on the suspension of his license.

MOSK, J.

WE CONCUR:

WRIGHT, C.J.
McCOMB, J.
PETERS, J.
TOBRINER, J.
BURKE, J.
SULLIVAN, J.

Appendix B

D.D.L. Activities — December 1967

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	60,764	753,600
% Establishing Insurance	83.3%	88.1%
% Depositing Security	1.0%	0.8%
% Establishing Other Exemptions	3.8%	6.9%
% Total Compliance	88.1%	95.8%
Security Deposited	$232,578	$3,052,904
Security Disbursements Authorized	$ 28,202	$ 293,396
Security Refunds Authorized	$237,002	$2,480,036
Security Requirement Requests Issued	9,950	122,916
Orders of Suspension Issued	8,938	114,000
Suspensions Terminated Within One Year		
Suspensions Set Aside 2,732		24,320*
Reinstatements Made 1,716	4,448	52,615
Suspensions Terminated After One Year by Filing Proof	903	13,999
Other Suspensions Terminated After One Year	1,840	24,755
Incoming Mail, Other Than Reports of Accident	44,318	674,377

*These figures commenced April 1, 1967.

D.D.L. Activities — December 1968

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	51,114	630,097
% Establishing Insurance	86.6%	87.6%
% Depositing Security	0.8%	0.9%
% Establishing Other Exemptions	5.5%	5.4%
% Total Compliance	92.9%	93.9%
Security Deposited	$251,036	$2,924,131
Security Disbursements Authorized	$ 22,942	$ 280,341
Security Refunds Authorized	$173,080	$2,157,910
Security Requirement Requests Issued	8,792	105,460
Orders of Suspension Issued	8,424	97,829
Suspensions Terminated Within One Year		
Suspensions Set Aside 1,601		27,398
Reinstatements Made 2,127	3,728	25,948
Suspensions Terminated After One Year by Filing Proof	782	12,756
Other Suspensions Terminated After One Year	1,692	18,771
Incoming Mail, Other Than Reports of Accident	56,083	642,367

D.D.L. Activities — December 1969

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	51,416	681,229
% Establishing Insurance	86.9%	87.6%
% Depositing Security	.4%	.5%
% Establishing Other Exemptions	14.9%	10.4%
% Total Compliance	102.2%	98.5%
Security Deposited	$ 89,703	$2,033,994
Security Disbursements Authorized	$ 16,877	$ 253,988
Security Refunds Authorized	$225,822	$2,623,171
Security Requirement Requests Issued	4,147	82,658
Orders of Suspension Issued	4,314	78,764
Suspensions Terminated Within One Year		
Suspensions Set Aside 2,523		40,316
Reinstatements Made 5,127	7,650	26,603
Suspensions Terminated After One Year by Filing Proof	57	7,069
Other Suspensions Terminated After One Year	4,929	19,459
Incoming Mail, Other Than Reports of Accident	43,916	691,447

D.D.L. Activities — December 1970

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	45,084	561,178
% Establishing Insurance	87.7%	85.8%
% Depositing Security	.4%	.4%
% Establishing Other Exemptions	2.3%	14.5%
% Total Compliance	90.4%	100.7%
Security Deposited	$ 88,048	$1,111,072
Security Disbursements Authorized	$ 13,652	$ 154,821
Security Refunds Authorized	$ 91,234	$1,212,474
Security Requirement Requests Issued	4,900	60,725
Orders of Suspension Issued	5,355	51,774
Suspensions Terminated Within One Year	1,587	
Suspensions Set Aside 1,320		21,143
Reinstatements Made 267		52,492
Suspensions Terminated After One Year by Filing Proof	7	1,304
Other Suspensions Terminated After One Year	7	32,135
Incoming Mail, Other Than Reports of Accident	65,193	640,145

D.D.L. Activities December 1971

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	46,932	551,948
% Establishing Insurance	83.4%	84.1%
% Depositing Security	.5%	.5%
% Establishing Other Exemptions	1.9%	2.2%
% Total Compliance	85.8%	86.8%
Security Deposited	$108,890	$1,216,497
Security Disbursements Authorized	$ 15,160	$ 160,670
Security Refunds Authorized	$ 93,737	$ 977,011
Security Requirement Requests Issued	5,707	65,589
Orders of Suspension Issued	4,572	54,779
Suspensions Terminated Within One Year	2,342	
Suspensions Set Aside 1,288		17,265
Reinstatements Made 1,054		8,989
Suspensions Terminated After One Year by Filing Proof	0	241
Other Suspensions Terminated After One Year	0	1
Incoming Mail, Other Than Reports of Accident	63,880	747,246

Appendix C

DIVISION 7. FINANCIAL RESPONSIBILITY LAWS

CHAPTER 1. SECURITY FOLLOWING ACCIDENT

Article 1. Reports of Accidents

Report Required

16000. The driver of every motor vehicle which is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway which accident has resulted in damage to the property of any one person in excess of two hundred dollars ($200) or in bodily injury or in the death of any person shall within 15 days after the accident, report the accident on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this article.

Amended Ch. 547, Stats. 1967. Effective Nov. 8, 1967.

Driverless Runaway Vehicle

16001. If the vehicle involved was a driverless runaway vehicle and was parked with the express or implied permission of the registered owner, the registered owner of the vehicle shall be construed to have been the driver of the vehicle for the purposes of this chapter.

Vehicle of Employer

16002. If the driver at the time of the accident was driving a motor vehicle owned, operated, or leased by the employer of the driver and with the permission of the employer, then the driver shall within five days after the accident report the accident to his employer on a form approved by the employer. Within 10 days after receipt of the report the employer shall transmit a report on a form approved by the department to the office of the department at Sacramento, except that an employer need not transmit

the report to the department when the vehicle involved in the accident is owned or operated as described in Section 16051 or 16055 or is owned or operated by any person or corporation who has filed with the department a certificate of an insurance carrier or surety company that there is in effect a policy or bond meeting the requirements of Section 16059 and when the insurance policy or bond was in full force and effect in respect to the vehicle at the time of the accident.

Amended Ch. 263, Stats. 1963. Effective Sept. 20, 1963.

Driver Incapacity

16003. If any driver is physically incapable of making the report, and is not the owner of the motor vehicle involved in the accident, the owner shall, as soon as he learns of the accident, report the matter in writing to the department. The driver or the owner shall make such other and additional reports relating to the accident as the department shall require.

Suspension of License for Failure to Report

16004. (a) The department may suspend the driving privilege of any person who willfully fails, refuses, or neglects to make a report of an accident as required in this article.

(b) A suspension taken under this section shall remain in effect for one year unless sooner terminated by receipt of the report of the accident or upon receipt of evidence by the department that failure to report was not willful.

Amended Ch. 266, Stats. 1961. Effective Sept. 15, 1961.

Use of Reports

16005. (a) All reports and supplemental reports required by this chapter including insurance information forms and the total amounts of security required for de-

posit as determined by the department from the reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the department and any other state department needing the same, except that the department shall disclose from the reports and security deposit records:

The names and addresses of persons involved in the accident.

The registration numbers and descriptions of vehicles involved in the accident.

The date, time, and location of the accident.

The exemption from security requirement which has been established under Section 16050.

That security has been deposited or that suspension action has been taken by the department.

Names and addresses of insurance carriers.

This information may be given to any person having a proper interest therein including:

The driver or drivers involved, or the employer, parent, or legal guardian thereof.

The authorized representative of any person involved in the accident.

Any person injured in the accident.

The owners of vehicles or property damaged in the accident.

Amended Ch. 1996, Stats. 1959. Effective Sept. 15, 1959.

Article 2. Security

Security

16020. Unless the driver involved in an accident described in Section 16000 complies with one of the conditions for exemption specified in Section 16050, the driver shall deposit security in a sum which shall be sufficient in the judgment of the department to satisfy any final payment

or judgments in any amount for bodily injury or in excess of two hundred dollars ($200) for property damage resulting from such accident as may be recovered against such driver or owner subject to the maximum limits required. The department shall determine the amount of security deposit upon the basis of the reports or other evidence submitted to it but shall not require a deposit of security for the benefit of any person when evidence has not been submitted by such person or on his behalf as to the extent of his injuries or the damage to his property within fifty (50) days following the date of the accident.

Amended Ch. 486, Stats. 1969. Effective Nov. 10, 1969.

No Deposit for Spouse or Child

16021. For purposes of this chapter a driver shall not be required to deposit security on behalf of his spouse or his minor child.

Employer Deposit of Security

16022. If the driver at the time of an accident was driving a motor vehicle owned, operated, or leased by the employer of the driver and with the permission of the employer, the security provisions of this chapter do apply to the employer and the suspension provisions of this chapter shall apply to the registration of all vehicles not covered by insurance, bond, or self-insurance certificate at the time of the accident which vehicles were owned, operated, or leased by the employer and shall not apply to the driver.

Form of Security

16023. The security shall be in the form of money or a bond or their equivalent as determined by the department and shall be in amounts of not more than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and subject to the limit for

one person, to a limit of not more than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not more than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident. A bond or its equivalent, as referred to herein, shall mean a bond or its equivalent conditioned for disbursement in a manner provided in Section 16026.

Amended Ch. 863, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 862, Stats. 1967. Effective Nov. 8, 1967. Operative July 1, 1968.

Reduction of Amount of Security

16024. The department may reduce the amount of security ordered in any case if, in its judgment, the amount ordered is excessive. In case the security originally ordered has been deposited, the excess on deposit over the reduced amount shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of Section 16027. The State Controller shall draw his warrant on the State Treasurer for the refund of any portion of a security deposit as ordered by the department under this section.

Custody of Security

16025. Security deposited in compliance with the requirements of this chapter shall be deposited by the department in the special deposit fund with the State Treasurer for the purpose of this section.

Disposition of Security

16026. The security shall be available for the following purposes:

(a) Payment of a final judgment in any amount for bodily injury or in excess of two hundred dollars ($200) for property damage rendered against the driver or drivers on whose behalf the deposit was made, for damages arising out of the accident in an action at law, begun not later than one year after the date of the accident, or within one year after the date of deposit of any security under subdivision (c) of Section 16053.

(b) Payment of any settlement agreement covering any claim arising out of the accident.

(c) Payment of any final judgment rendered as a result of default under any duly acknowledged settlement agreement.

Every distribution of funds from the security deposit shall be subject to the limits of the department's evaluation on behalf of a claimant but not in excess of the maximum amounts provided in this chapter for bodily injury and for property damage.

Amended Ch. 486, Stats. 1969. Effective Nov. 10, 1969.

Refund of Security Deposits

16027. (a) Whenever all judgments or settled claims referred to in this chapter have been discharged, or when exemption from the security requirement has been established under Article 3 of this chapter subsequent to the deposit of security, or a period of one year has elapsed following the accident or following the deposit of security under subdivision (c) of Section 16053 and no action at law involving any of the claims was instituted and is pending, any security remaining on deposit shall be refunded to the person making the deposit or to a person designated by him. Notice of an action at law instituted and pending within such one-year period that is filed with the department later than 30 days after the expiration of such one-year period shall not prevent the refund of such security.

(b) In the event that the deposit or any balance thereof is determined by the department to be refundable under the provisions of this section but remains unclaimed by the depositor or any other person entitled thereto for a period of five years following the date of such determination, the unclaimed deposit shall then be transferred to the Motor Vehicle Fund.

Amended Ch. 76, Stats. 1963. Effective Sept. 20, 1963.

Amended Ch. 317, Stats. 1965. Effective Sept. 17, 1965.

Article 3. Exemptions

Exemptions

16050. In order to be exempt from the requirements of security, every driver or employer involved in an accident and required to report such accident by Section 16000 shall establish to the satisfaction of the department that the provisions of this article are applicable to his responsibilities arising out of the accident.

Publicly Owned Vehicles

16051. Exemption may be established by filing a report indicating that the motor vehicle involved in the accident was owned or leased by or under the direction of the United States, this State, or any political subdivision of this State or municipality thereof.

No Damage or Injury or Vehicle Parked

16052. Exemption may be established by filing evidence with the department indicating:

(a) That no injury or damage was caused in the accident to the person or property of any one other than the driver or owner of the vehicle.

(b) That at the time of the accident the vehicle was parked, unless the vehicle was parked at a place where the parking was at the time of the accident prohibited under some applicable law or ordinance.

Releases, Judgments, Settlement Agreements, and Defaults

16053. Exemption may be established by filing evidence satisfactory to the department:

(a) That the driver has been released from liability by all other persons injured or damaged in the accident. A covenant not to sue shall relieve the parties thereto as to each other from the security requirements of this chapter. The department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural guardian or legal guardian on behalf of a minor without the approval of any court or judge.

(b) That all judgments that may arise out of damages or injuries sustained in the accident have been rendered in favor of the driver or have been satisfied by him.

(c) That a duly acknowledged settlement agreement with respect to all damages or injuries arising out of the accident has been executed by the driver.

Whenever within a three-year period after the filing of a duly acknowledged settlement agreement the department receives notice of a default in any payment under such an agreement, provided that such amount in default is in excess of two hundred dollars ($200), the department shall forthwith suspend the driving privilege of the person defaulting and the privilege shall not be restored until either

(1) Such driver deposits and thereafter maintains security as required in Article 2 (commencing at Section 16020) or in such amount as the department may then determine.

(2) One year has elapsed following the date when such security was required and the conditions for reinstatement have been satisfied as set forth in Section 16082.

Amended Ch. 1742, Stats. 1959. Effective Sept. 18, 1959.
Amended Ch. 1996, Stats. 1959. Effective Sept. 18, 1959.
Amended Ch. 317, Stats. 1965. Effective Sept. 17, 1965.
Amended Ch. 486, Stats. 1969. Effective Nov. 10, 1969.

Evidence of Payment by or to Insurer

16054. The department may accept evidence of a payment to a driver or to the owner of a vehicle involved in any accident by the insurance carrier of any other person involved in the accident on account of damage to property or bodily injury as effective to relieve the driver or owner from the security and suspension provisions of this chapter in respect to any claim for property damaged or bodily injury arising out of the accident by the person on whose behalf such payment has been made. A payment to the insurance carrier of a driver or owner having a right of subrogation is equivalent to a payment to the driver or owner.

Self-Insurer

16055. Exemption may be established if the owner of the motor vehicle involved in the accident was a self-insurer. Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in this article.

Certificate of Self-Insurance

16056. (a) The department may in its discretion, upon application, issue a certificate of self-insurance when it is satisfied that the applicant in whose name more than 25 vehicles are registered is possessed and will continue to be possessed of ability to pay judgments obtained against him. The certificate may be issued authorizing the applicant to act as a self-insurer for either property damage or bodily injury or both. Any person duly qualified under the laws or ordinances of any city or county to act as self-insurer and then acting as such, shall upon filing with the department satisfactory evidence thereof, along with the applica-

tion as may be required by the department, be entitled to receive a certificate of self-insurance.

(b) Upon not less than five days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after the judgment has become final and has not been stayed or satisfied shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

Insurance Policy or Bond

16057. Exemption may be established by filing with the department satisfactory evidence:

(a) That the owner had an automobile liability policy or motor vehicle liability policy or bond in effect at the time of the accident with respect to the driver or the motor vehicle involved in the accident, unless it is established that at the time of the accident the motor vehicle was being operated without the owner's permission, express or implied, or was parked by a driver who had been operating the vehicle without permission.

(b) That the driver of the motor vehicle involved in the accident, if he was not the owner of such motor vehicle, had in effect at the time of the accident an automobile liability policy or motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him.

(c) That such liability as may arise from the driver's operation of the motor vehicle involved in the accident is, in the judgment of the department covered by some form of liability insurance or bond.

(d) Any automobile liability policy or bond referred to in this section shall comply with the requirements of Section 16059 of this code and Sections 11580, 11580.1 and 11580.2

of the Insurance Code, but need not contain provisions other than those required by said sections.

Amended Ch. 1259, Stats. 1963. Effective Sept. 20, 1963.

Amended Ch. 1314, Stats. 1968. Effective Nov. 13, 1968.

Evidence of Insurance or Bond

16058. Evidence of insurance or bond coverage shall be submitted in conformance with the requirements of Section 16060. In the event of notice to the department by the company which issued one of the above stated policies or bonds that coverage was not in effect then the policy or bond shall not operate to establish an exemption as provided for by Section 16057.

Amended Ch. 1418, Stats. 1961. Effective Sept. 15, 1961.

Requirements of Policy or Bond

16059. (a) No policy or bond shall be effective under Section 16057 unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subdivision (b) of this section, nor unless the policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under Section 16057 with respect to any vehicle which was not registered in this state or was a vehicle which was registered else-

where than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing the policy or bond is authorized to do business in this state, or if the company is not authorized to do business in this state, unless it executes a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon the policy or bond arising out of an accident mentioned in subdivision (a).

Amended Ch. 862, Stats. 1967. Effective Nov. 8, 1967. Operative July 1, 1968.

Notice by Insurer to Department

16060. Upon receipt of notice of an accident from the department, the insurance company or surety company named in the notice shall notify the department within such time and in such manner as the department may require whenever the policy or bond was not in effect at the time of the accident.

Article 4. Suspensions

Suspensions

16080. Whenever a driver has failed within 50 days after an accident to establish his exemption from security and has failed to deposit security within 10 days after notice by the department specifying the amount of security, the department shall suspend the privilege of the driver to drive a motor vehicle, including the driving privilege of a nonresident in this State. The suspension shall become effective not later than the seventy-sixth day after receipt of the accident report by the department.

Course of Employment: Exemption

16081. The privilege of a person employed for the purpose of driving a motor vehicle for compensation whose

occupation requires the use of a motor vehicle in the course of his employment to drive a motor vehicle not registered in his name and in the course of his employment shall not be suspended under this chapter even though his privilege to drive is otherwise suspended under this chapter.

Amended Ch. 1615, Stats. 1961. Effective Sept. 15, 1961.

Duration of Suspension

16082. (a) The privilege of driving a motor vehicle suspended as provided in Section 16080 shall remain suspended until:

(1) The person complies with the requirements of Section 16050, or

(2) The person deposits or there is deposited on his behalf the security required under this article.

(3) The driving privilege is suspended under the authority of Section 16370 as the result of a judgment arising out of the same course of action for which security was required in the suspension authorized under Section 16080.

(b) Whenever the suspension provided in Section 16080 or Section 16053 has remained in effect for a period of one year from the date of accident or from the date security was required on the default of a duly acknowledged settlement agreement, the privilege of driving a motor vehicle and all licenses evidencing such privilege shall remain so suspended until:

(1) Proof of ability to respond in damages has been filed with the department in the manner prescribed by Section 16430. The department shall waive the requirement for proof of ability to respond in damages and upon request shall cancel any bond or certificate of insurance, or shall direct the return to the person entitled thereto of any money or securities deposited as proof of financial responsibility, at any time as specified in Section 16480; and

(2) There is no evidence on file with the department that during such one-year period an action at law arising out of

the accident or upon the agreement has been instituted and is pending. Notice of an action at law instituted and pending within such one-year period that is filed with the department later than 30 days after the expiration of such one-year period, shall not require the department to take any action upon such late notice. In the event that an action at law was filed as referred to herein, the department may, after three years from the date that eligibility for the termination of the suspension would have otherwise been established, terminate any action taken under Chapter 1 (commencing with Section 16000) of Division 7 of this code.

Amended Ch. 1742, Stats. 1959. Effective Sept. 18, 1959.
Amended Ch. 713, Stats. 1963. Effective Sept. 20, 1963.
Amended Ch. 317, Stats. 1965. Effective Sept. 17, 1965.
Amended Ch. 1014, Stats. 1967. Effective Nov. 8, 1967.

Suspension for Foreign Violations

16083. The department shall suspend the driving privilege of any resident of this State upon receiving notice from another state that the person's driving privilege in that state has been suspended for failure to meet the security provisions of the law in that state, if the suspension in that state was taken on grounds that would have resulted in a suspension in this State.

Correction of Errors

16084. Whenever the department has taken any action or has failed to take any action under this chapter by reason of having received erroneous information, or by reason of having received no information, it shall take appropriate action to carry out the purpose and effect of this chapter upon receiving correct information. The provisions of this section shall not be deemed to require the department to increase the amount of any deposit after it has been ordered under this chapter.

Appendix D

Original
Filed
Jul 26 1971
Clerk, U.S. Dist. Court
San Francisco

United States District Court
Northern District of California

No. 70 2554

Celestino V. Rivas and Zeferino C. Samaniego, individually and on behalf of all other persons similarly situated,
Plaintiffs,

vs.

Robert C. Cozens, Director, California Department of Motor Vehicles, et al.,
Defendants.

MEMORANDUM OF DECISION

Before: HAMLIN, Circuit Judge, SWEIGERT and CONTI, District Judges

PER CURIAM

After this court's Memorandum of Decision filed May 6, 1971, denying a preliminary injunction sought on the ground of invalidity of the California Financial Responsibility Law (Cal. Vehicle Code Sec. 16000 et seq.), the Supreme Court of the United States rendered its decision in *Bell v. Burson* ..... U.S. ..... (No. 5586, May 24, 1971 holding invalid a Georgia Motor Vehicle Safety Responsibility Act (Ga. Code Anno. Chap. 92A, § 601 et seq.)

Both parties, relying on *Bell v. Burson,* have now moved this court for summary judgment.

Although the Georgia statute (Sec. 602) provided for "hearings" (without specifying any particular kind or

extent thereof) "upon request of persons aggrieved by orders or acts of the Department," it also provided that "such hearings need not be a matter of record and the decision as rendered by the Director shall be final unless the aggrieved person shall desire an appeal in which case he shall have the right to enter an appeal to the Supreme Court. . . ."

Under the Georgia statute, as interpreted by the Georgia Court of Appeals in *Burson v. Bell,* 121 Ga. App. Rep. 418 (January 1970), suspension of license was mandatory (unless financial responsibility was shown) without regard to what the Georgia court considered the "irrelevant" issue of fault.

The Supreme Court in *Bell,* supra, has held, however, that a state "may not, consistently with due process, eliminate consideration of that factor in its prior hearing;" that, since the only purpose of the statute is to obtain security from the licensee to pay any judgment against him, the inquiry need not take the form of a full adjudication of the question of liability but it must, at least, determine "whether there is a reasonable possibility of judgment in the amounts claimed being rendered against the licensee." The court expressly declined to do any more than lay down this requirement.

Unlike Georgia, the California statute, as interpreted by the State Supreme Court in *Orr v. Superior Court,* 71 Cal. 2d 220, 77 Cal. Rptr. 816 (1950), squarely meets the requirement of *Bell* that, before ordering suspension of the license of a driver involved in an accident, the Department must consider culpability to the extent of determining whether there is a reasonable possibility that a judgment may be recovered against the licensee.

The court in *Orr* held that this determination may be made, without deciding between conflicting versions of the

accident, upon the basis of accident reports which drivers are obligated to make (Sec. 16000) and from other evidence submitted to it (Sec. 16020) and that an order suspending license is subject to court review.

In *Bell,* the Supreme Court stated that if Georgia provided a forum for determination of the issue of fault, i.e., reasonable possibility of judgment, "it may decide" (among suggested alternatives) "merely to include consideration of the question at the administrative hearing now provided," indicating that the inexplicit hearing provision of the Georgia statute for an informal, unrecorded hearing, would be sufficiently appropriate to the nature of the case.

We are of the opinion that the prior hearing provided by the California statute, based upon required accident reports and other evidence and involving, not a resolution of conflicting versions bearing on the ultimate question of liability, but merely the narrow (but constitutionally sufficient) issue whether there is any evidence which, if later believed by a trier of fact, would render a judgment against the licensee reasonably possible, is likewise sufficiently appropriate to the nature of the case and that anything further would not significantly contribute to that kind of a determination.

The parties seem to agree that no genuine issues of material fact are presented and that the only question is one of law.

We agree and for the foregoing reasons grant summary judgment in favor of defendant.

Dated:

/s/ O. D. Hamlin
Circuit Judge

/s/ W. Sweigert
District Judge

/s/ Samuel Conti
District Judge

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, *Petitioner,*

vs.

FEDERICO RIOS, a minor, etc., *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of California

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

(1) Whether the decision below, which is based in part on California cases construing the California Constitution, rests solely upon an independent federal ground so as to be within the appellate jurisdiction of this Court.

(2) Whether the Department's summary suspension procedure, based solely upon written submissions

by adverse parties, satisfies basic due process requirements.

STATEMENT OF THE CASE

The California Financial Responsibility Law (CAL. VEHICLE CODE §16000, *et seq.)* provides that a driver involved in an automobile accident which results in any bodily injury or in property damage exceeding $200 must file a written accident report within fifteen days of the accident. The official report form provided by the Department of Motor Vehicles [hereinafter "Department"] contains a section requiring each party to indicate who was at fault in the accident and to provide a written description of the accident. The report form also requires each party to estimate the amount of the damages and to indicate whether he had an automobile liability insurance policy in effect at the time of the accident.

If a driver was not insured at the time of the accident, the Department endeavors to determine whether there is a "reasonable possibility that a judgment may be recovered" against him. If the Department decides that there is such a possibility, it estimates the amount of such possible judgment and notifies the uninsured motorist that his license will be suspended unless he either deposits security for that amount within ten days or establishes an exemption from the security requirement. CAL. VEHICLE CODE §16080. The most common exemptions include a release from the other party to the accident or proof of a settlement with the other party. CAL. VEHICLE CODE §§16050-59.

Prior to the decision of the court below, the determination of both the driver's potential culpability and the amount of his potential liability were based solely upon the written report forms of the drivers involved. A driver was not given the opportunity for a personal hearing and he was not allowed to examine the information upon which the Department based its decision.[1]

On August 15, 1972, the California Supreme Court issued its writ of mandate ordering the Department to grant a personal hearing prior to the suspension of drivers' licenses under the Financial Responsibility Law. Citing federal cases and state cases construing both the United States and California Constitutions, the court unanimously held that the Department's denial of a personal hearing violated the basic requirements of due process.

I.

THE DECISION BELOW WAS BASED ON AN ADEQUATE AND INDEPENDENT NONFEDERAL GROUND

In reaching the decision below, the California Supreme Court stated:

> Petitioner relies on numerous recent cases in which the United States Supreme Court and this court have recognized that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest. (Goldberg v. Kelly (1970) 397 U.S. 254, 266; Sniadach v. Fam-

[1]The Department has conceded that it may not properly withhold the adverse party's report. Department Br. at 8.

> ily Finance Corp. (1969) 395 U.S. 337, 342; Randone v. Appellate Department (1971) 5 Cal.3d 536, 547.) This principle is applicable to a plethora of vital personal and property rights (see Randone v. Appellate Department, 5 Cal.3d 536, 548, fn. 8), but it has most frequently been applied in this state to invalidate statutes affording a creditor prejudgment remedies against a debtor without prior notice or hearing (see, e.g., Blair v. Pitchess (1971) 5 Cal.3d 258; McCallop v. Carberry (1970) 1 Cal.3d 903; Cline v. Credit Bureau of Santa Clara Valley (1970) 1 Cal.3d 908).
>
> The rule explicated in the foregoing cases is applicable to the instant circumstances.
>
> 7 Cal.3d 792, 795.

The California cases cited above interpreted both the United States and California Constitutions. In *Blair v. Pitchess,* 5 Cal.3d 258 (1971), the court held that the California claim and delivery law violated the due process clauses of both the United States and California Constitutions. And in *Randone v. Appellate Department,* 5 Cal.3d 536 (1971), *cert. denied* 407 U.S. 924 (1972), the court held that California's law authorizing prejudgment attachments also violated the due process clauses of the United States and California Constitutions. Pursuant to these cases, the California Supreme Court would have reached the same result in the present case had it confined its analysis solely to the state constitutional issue.[2]

---

[2]In Respondent Rios' supplemental brief on the merits before the California Supreme Court, he asserted both the federal and state due process clauses as grounds for decision.

The mere fact that the California court cited federal constitutional decisions in no way indicates that it restricted its holding to federal constitutional grounds. The California Supreme Court has long held that the California Constitution's due process provision, CAL. CONST. ART. 1, §13, provides protections substantially similar to the due process clause of the Fourteenth Amendment. *See, e.g., Sail'er Inn, Inc. v. Kirby,* 5 Cal.3d 1, 15-17 (1971). Accordingly, federal constitutional cases are frequently cited by the California Supreme Court in reaching decisions under the state constitution. *See, e.g., Department of Mental Hygiene v. Kirchner,* 60 Cal.2d 716 (1964), *vacated* 380 U.S. 194, *judgment reinstated* 62 Cal.2d 586 (1965).

In *Department of Mental Hygiene v. Kirchner,* 380 U.S. 194, 197 (1965), Mr. Justice Harlan stated: "This Court is always wary of assuming jurisdiction of a case from a state court unless it is plain that a federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case." In light of the viability of the due process clause of the California Constitution, it is far from plain that "a federal question is necessarily presented" in this case.[3] By declining to review the decision below, this Court may avoid the problem that

[3]This is not a case where ". . . the State Constitution was interpreted under what the state Court deemed the compulsion of the Federal Constitution." Department of Mental Hygiene v. Kirchner, 380 U.S. 194, 198 (1965). *Compare* State Tax Commission of Utah v. Van Cott, 306 U.S. 511 (1939). Here, the state and federal due process clauses are independent and separate bases for decision. *See* Jankovich v. Indiana Toll Road Commission, 379 U.S. 487 (1965).

developed in *California v. Krivda,* 41 U.S.L.W. 3224 (S.Ct. Oct. 24, 1972), where, after full briefing and oral argument, the matter could not be decided on the merits because of questions regarding the Court's jurisdiction. *Cf. Jankovich v. Indiana Toll Road Commission,* 379 U.S. 487 (1965).

II.

THE DECISION BELOW DOES NOT REQUIRE THE DEPARTMENT TO MAKE A FULL ADJUDICATION ON THE ISSUE OF LIABILITY

By ordering the Department to hold hearings prior to license suspensions the court below did not transform the procedure into a full adjudication on the issues of liability. The court reaffirmed that the determination to be made by the Department was "whether there is a reasonable possibility of a judgment against the driver . . ." 7 Cal.3d 792, 799. Contrary to the Department's assertion, its role is not analogous to the role of a trial court in ruling on a demurrer to a complaint. The Department may not merely assume the facts stated in the complaining driver's accident report to be true. Rather, it has an affirmative duty to assess the credibility of the reports in question. *Orr v. Superior Court,* 71 Cal.2d 220, 227 (1969).

Under the Department's previous procedures at issue herein, the decision to suspend a driver's license[4]

[4]This Court has recently noted that the decision to suspend a driver's license ". . . may become essential in the pursuance of a livelihood." Bell v. Burson, 402 U.S. 535, 539 (1972).

could be made solely on the basis of the written assertions by adverse parties. As the court below found, this unilateral power to effect the suspension of a license by asserting a spurious or dubious claim or by inflating the value of the damages enabled complaining drivers to coerce the uninsured motorist to compromise potential defenses in private litigation.[5] Under these circumstances, the procedural protections afforded by a personal hearing are particularly necessary to arrive at a meaningful determination of possible culpability. The Department has shown no exceptional circumstances which would warrant the denial of rudimentary due process procedures. *Cf. Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950); *North American Storage Co. v. Chicago*, 211 U.S. 306 (1908).

III.

PROVIDING PERSONAL HEARINGS WILL NOT RESULT IN AN UNDUE ADMINISTRATIVE BURDEN

Pursuant to the California Vehicle Code, the Department presently has in effect an informal personal hearing mechanism to adjudicate suspension cases other than those arising under the Financial Respon-

---

[5]The court below stated:

> The others involved in the accident may omit pertinent matters or may simply falsify their reports in an attempt to force petitioner to pay their claims of damage or suffer suspension of his license. If he is not afforded the opportunity to challenge these errors or misstatements at a hearing before the Department he is forever precluded from a meaningful opportunity to defend his version of the accident to avoid a suspension.
>
> 7 Cal.3d 792, 798 n.5.

sibilty Law. *E.g.*, CAL. VEHICLE CODE §§13800, 14100. Every month the Department conducts thousands of personal examinations, hearings, and interviews, each dealing with the particular facts and circumstances of an individual driver's case.[6] In light of the Department's existing hearing mechanism, the added administrative burden caused by affording the opportunity for personal hearings in Financial Responsibility Law suspensions would be minimal.

IV.

THERE ARE NO CONFLICTING LOWER COURT DECISIONS

On November 13, 1972, this Court vacated the decision of the three-judge district court in *Rivas v. Cozens*, 41 U.S.L.W. 3271 (S.Ct. Nov. 13, 1972). Thus, the Department's assertion that it is subject to two conflicting decisions is no longer applicable.

To the best of Respondent's knowledge, every other lower court which has recently considered the issue has held that a personal hearing is required in financial responsibility suspension cases. *See MacBeth v. State of Utah*, 332 F.Supp. 1191 (C.D. Utah 1971); *Pollion v. Lewis*, 332 F.Supp. 777 (N.D. Ill. 1971); *Gayton v. Cassidy*, Civil No. SA 69 CA 153 (W.D.

---

[6]During April, 1971, for example, the Department of Motor Vehicles held a total of 11,252 personal hearings, interviews and re-examinations under CAL. VEHICLE CODE § 13800 alone. *See* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, REPORT OF GENERAL ACTIVITIES at 6 (April 1, 1971), appended to Respondent Rios' memorandum to the California Supreme Court in opposition to a partial stay of the effectiveness of the decision (filed August 28, 1972).

Tex., Junee 30, 1971); *Pratt v. Kaye,* ..... F.Supp. ....., 40 U.S.L.WW. 2197 (D.D.C., Sept 21, 1971); *Ferguson v Root,* Noo. S 771-560, Ind. Super. Ct., Oct. 19, 1971, 5 Clearinghoouse Rev. at 677 (March 1972).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorarri should be denied.

Dated: NNovember 22, 1972.

Respectfully submitted,

RONALD F. COLES
CONTRA COSTA LEGAL SERVICES FOUNDATION
Attorney for Respondent.

FRED H. AALTSHULER
RICHARDD A. GONZALES
CALIFORNIA RURAL LEGAL ASSISTANCE
COOPERATIVEE LEGAL SERVICES CENTER
Of Counnsel.

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(D)
DEC 11 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA,
Petitioner,

v.

FEDERICO RIOS, a minor, etc.,
Respondent.

Petitioner's Reply Brief

EVELLE J. YOUNGER
Attorney General of the State of California

L. STEPHEN PORTER
Deputy Attorney General

VICTOR D. SONENBERG
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-3600
Attorneys for Petitioner

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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IN THE

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No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA,
Petitioner,

v.

FEDERICO RIOS, a minor, etc.,
Respondent.

Petitioner's Reply Brief

INTRODUCTION

Pursuant to rule 24(4) and 24(5), this brief is being filed in reply to arguments raised for the first time in the brief in opposition (*viz.*: that *Rios v. Cozens* was decided on independent State grounds) and in response to this Court's decision in *Rivas v. Cozens,* 41 U.S.L.W. 3271 (11/13/72) which was not available at the time the Petition for Writ of Certiorari was filed herein.

ARGUMENT

I. The Decision in Rios v. Cozens Was Made Under What the California Court Deemed the Compulsion of the Federal Constitution.

The respondent contends that because in *Rios* the California Sureme Court cited (in addition to Federal cases) California cases which relied on *both* the State and Federal

Constitution, the Court must have been relying upon the State Constitution as an independent ground for decision (Brief for respondent in opposition, pp. 3-5). Such an argument ignores the explicit language to the contrary in *Rios*, and this Court's rule that it has jurisdiction to review cases in which "the federal ground has been the *sole* [Court's emphasis] basis for the decision, or the State Constitution was interpreted under what the state Court deemed *the compulsion of the Federal Constitution.*" (Emphasis added.) *Mental Hygiene Dept. v. Kirchner,* 380 U.S. 194, 198 (1965).

Initially, it should be pointed out that nowhere in the decision in *Rios v. Cozens* does the Court refer to the State Constitution as a basis for its decision, or even as an issue before it. And this despite the fact that respondent *Rios* urged below the State constitutional provision as grounds for the Court's decision (see Brief for respondent in opposition, p. 4, n. 2). Omission of the State Constitution as a stated basis for its decision, *even though* such basis was urged by the prevailing party, would appear to be a cogent indicator that the Court was *not* relying on the State Constitution as the basis for its decision.[1]

But even more persuasive of the conclusion that the State Supreme Court reached its decision under what it "deemed the compulsion of the Federal Constitution" is its explicit language to that effect.

---

1. In *Jankovich v. Toll Road Comm'n,* 379 U.S. 487 (1965), cited by respondent in his brief (p. 5, n. 3; p. 6), the State court expressly cited the applicability of State law as an issue in the case before it (379 U.S. at 489-490). And see especially *State Tax Comm'n v. Van Cott,* 306 U.S. 511 (1939), also cited by respondent (Brief in opposition, p. 5, n. 3), where even though the State court *did* expressly declare the applicability of State law to be one of the issues, this Court was nonetheless persuaded by additional language in the decision that it was reached under the constraints of the Federal Constitution and U.S. Supreme Court decisions (306 U.S. at 514).

At the outset, the State Supreme Court notes that *Orr v. Superior Court,* 71 Cal.2d 220, 454 P.2d 712 (1969), *upholding* the procedure presently in question, was decided by it two years before *Bell v. Burson,* 402 U.S. 535 (1971), was decided by this Court. *Rios v. Cozens,* 7 Cal.3d 792, 796; 499 P.2d 979, 982. The Court, after viewing *Bell* as requiring a hearing to determine the issue of culpability, then stated: "We are called upon, then, to examine the procedure followed in this state to determine *if it satisfies the requirements* of *Bell v. Burson* . . . ." (Emphasis added.) *Rios v. Cozens, supra,* 7 Cal.3d at 797, 499 P.2d at 982. The Court then said: "We conclude that this procedure does not comply with the *command* of *Bell v. Burson* . . . that a hearing be granted prior to license suspension for a failure to comply with the financial responsibility law." (Emphasis added.) *Rios v. Cozens, supra,* 7 Cal.3d at 798, 499 P.2d at 983. See also 7 Cal.3d at 794, 499 P.2d at 980-981. Indeed, a more explicit declaration of deference to this Court's Federal constitutional holdings could hardly be formulated; *i.e.,* that it was *Bell v. Burson* that "compelled" the Court to overrule the decision it issued just two years before.

Thus, because of its omission of any reference to the State Constitution as a basis for its decision and because of its express declaration that it was the *"command"* of *Bell v. Burson* that governed the procedures in question, there can be no doubt that the California Supreme Court's decision in *Rios v. Cozens* was made under what it "deemed the compulsion of the Federal Constitution."[2]

---

2. Indeed, the four State court decisions cited in *Rios,* which respondent views as evidence of the Court's reliance on independent State grounds (Brief in opposition, pp. 3-4), were themselves clearly decided under "compulsion of the Federal Constitution." In each one of these four cases, the State Supreme Court explicitly declared that it was the *United States* Supreme Court's construction

II. The Case of Rivas v. Cozens Is Not Moot Because the Department of Motor Vehicles Is Deferring the Granting of Any Hearings Pending a Ruling by This Court.

In *Rivas v. Cozens*, 41 U.S.L.W. 3271 (11/13/72), this Court quoted the appellants' statement that they "have now been accorded the opportunity for a personal evidentiary hearing regarding the suspension of their driver's license."

This statement is incorrect. The Department of Motor Vehicles, with the very problem of mootness in mind, has pointedly refrained from affording hearings since the decision in *Rios v. Cozens*, 7 Cal.3d 792, 499 P.2d 979 (1972), and instead has stayed any orders suspending licenses, pending the outcome of the *Rios* and *Rivas* cases. When a hearing has been requested or when the Department notifies one that it intends to suspend a license under the financial responsibility law, it notifies the licensee as follows:

> "The Department has made a determination that there is a reasonable possibility of a judgment being ren-

---

of the due process clause in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), that compelled the invalidation of the State statutes. For example in *McCallop v. Carberry*, 1 Cal.3d 903, 464 P.2d 122, the court said: "We are persuaded that this type of prejudgment wage garnishment falls within the rationale of *Sniadach*, and must be held to constitute a taking of property in violation of procedural due process." *McCallop v. Carberry, supra*, 1 Cal.3d at 907, 464 P.2d at 125. And again in *Cline v. Credit Bureau of Santa Clara Valley*, 1 Cal.3d 908, 464 P.2d 125, it was stated: "the prejudgment wage garnishment procedure attacked by plaintiff must be ruled invalid under the rationale of *Sniadach*." *Cline v. Credit Bureau of Santa Clara Valley, supra*, 1 Cal.3d at 909, 464 P.2d at 126. And as if to dispel any doubt on this point, the State Supreme Court in *Randone v. Appellate Department*, 5 Cal.3d 536, 488 P.2d 13, declared: "We do no more here than follow the principle of *Sniadach*, as later expressed in our own cases of *McCallop*, *Cline* and *Blair*." *Randone v. Appellate Department, supra*, 5 Cal.3d at 564, 488 P.2d at 32. See also *Blair v. Pitchess*, 5 Cal.3d 258, 277; 486 P.2d 1242, 1255.

dered against you as a result of the above accident and for the amount stated.

You may request a hearing should you wish to challenge the Department's determination pending a final decision on the appeal before the United States Supreme Court in the case of Rios vs Cozens.

If a hearing is requested within 14 days, the suspension(s) resulting from the accident will be stayed pending a decision by the court. Keep the Department notified of any change of address.

Failure to make a written request for a hearing within 14 days from the date of this letter is a waiver of the right to a hearing.

This notice applies only to actions taken under the Security Following Accident Law and does not affect suspensions or revocations under any other provision of the law."

(A sample copy of a typical notification is attached hereto as Appendix A.)

It is thus clear that the Department is maintaining the status quo and has done nothing with respect to Mr. Rivas or any other member of the class, which would render the matter moot.

We would also bring to the Court's attention that the State Legislature has now ratified the action of the Department of Motor Vehicles by passing legislation that holds the license suspension provisions of the financial responsibility law in abeyance until this case is determined by this Court. Veh. Code § 16080.5. (A copy of this bill is attached hereto as Appendix B, and as of this writing, the bill is on the Governor's desk awaiting signature.)

It is thus apparent that the case of *Rivas v. Cozens* is still viable and not moot.

CONCLUSION

For the above reasons it is respectfully submitted that respondent's opposition to the petition for certiorari pending herein is without merit and that said petition should therefore be granted.

Dated: December 8, 1972

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the
State of California

L. STEPHEN PORTER
Deputy Attorney General

VICTOR D. SONENBERG
Deputy Attorney General
Attorneys for Petitioner

Appendix A

DEPARTMENT OF MOTOR VEHICLES—[Letterhead]

NOTICE OF
CALIFORNIA SUPREME COURT DECISION

Accident:
Location:

The Department has made a determination that there is a reasonable possibility of a judgment being rendered against you as a result of the above accident and for the amount stated.

You may request a hearing should you wish to challenge the Department's determination pending a final decision on the appeal before the United States Supreme Court in the case of Rios vs. Cozens.

If a hearing is requested within 14 days, the suspension(s) resulting from the accident will be stayed pending a decision by the court. Keep the Department notified of any change of address.

Failure to make a written request for a hearing within 14 days from the date of this letter is a waiver of the right to a hearing.

This notice applies only to actions taken under the Security Following Accident Law and does not affect suspensions or revocations under any other provision of the law.

DEPARTMENT OF MOTOR VEHICLES

(General Hearing Notice)

Appendix B

CHAPTER .....

An act to add Section 16080.5 to the Vehicle Code, relating to financial responsibility, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 748, Conrad. Financial responsibility.

Requires that any proceeding or order of the Department of Motor Vehicles, relating to the suspension of the driver's license or driving privilege of any person, or the registration card or license plates for any vehicle owned by any person, pursuant to specified provisions of the Vehicle Code re financial responsibility laws which otherwise require such suspension, be stayed by the receipt by the department of a request from such a person for a hearing. Requires, upon the receipt of any such request, the department to refund any security deposited by such person.

Requires that such provisions remain in effect pending a decision by the United States Supreme Court regarding the constitutionality of the procedures of the department relating to the suspension of drivers' licenses and driving privileges.

Provides that if the United States Supreme Court decides that the department's procedures re driver's license and vehicle registration suspensions for failure to post security following a vehicular accident afforded due process and were constitutional, the department shall resume proceedings and the issuance of suspension orders pursuant to such specified provisions 30 days thereafter or as soon thereafter as possible. Provides that if the department's procedures are found by the court not to afford due process and hearings are required to provide for calling of wit-

nesses or the taking of oral testimony, the provisions of this act re the stay of department proceedings and orders shall remain operative until amended or repealed by the Legislature.

To take effect immediately, urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16080.5 is added to the Vehicle Code, to read:

16080.5. (a) Any proceeding or order of the department pursuant to subdivision (c) of Section 16053, or Section 16080, 16100, or 16484, relating to the suspension of the drivers' license or driving privilege of any person, or the registration card or license plates for any vehicle owned by any person, shall be stayed by the receipt by the department of a request from such person for a hearing. Upon the receipt of any such request, the department shall refund any security deposited by such person.

(b) The provisions of subdivision (a) shall remain in effect as provided in this subdivision pending a decision by the United States Supreme Court regarding the constitutionality of the procedures of the department relating to the suspension of drivers' licenses and driving privileges. If the United States Supreme Court decides that the department's procedures approved by the federal court in the case of Rivas v. Cozens (1971), 327 F. Supp. 867, and in use prior to the decision of the California State Supreme Court in the case of Rios v. Cozens (1972), 7 Cal. 3d 792, afforded due process and were constitutional, the department shall resume proceedings and the issuance of suspension orders pursuant to subdivision (c) of Section 16053, and Sections 16080, 16100, and 16484 30 days thereafter or as soon thereafter as feasible, as reasonably determined by the department, and subdivision (a) of this section shall no longer have any force or effect. If the department's procedures in use prior to the case of Rios v. Cozens are

found by the court not to afford due process and hearings are required to provide for calling of witnesses or the taking of oral testimony, the provisions of subdivision (a) shall remain operative until amended or repealed by the Legislature.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The Department of Motor Vehicles is required to issue orders of suspension of drivers' licenses or driving privileges, and registration cards and license plates, pursuant to subdivision (c) of Section 16053 of, and Sections 16080, 16100, and 16484 of, the Vehicle Code, in the administration of Chapters 1 (commencing with Section 16000), 2 (commencing with Section 16250), and 3 (commencing with Section 16430) of Division 7 of the Vehicle Code.

A three-judge United States district court in the case of Rivas v. Cozens (1971), 327 F. Supp. 867, determined that the existing procedures of the Department of Motor Vehicles in the administration of such provisions were sufficient to afford due process to the persons affected.

However, the California State Supreme Court thereafter rendered a contrary opinion in the case of Rios v. Cozens, (1972), 7 Cal. 3d 792, which opinion requires the Department of Motor Vehicles to provide an opportunity for an extensive hearing to an uninsured motorist prior to suspending his driving privilege under the applicable statutes.

The Department of Motor Vehicles does not now have sufficient funds budgeted to conduct full scale or extensive hearings on the issues to be determined by the Department

of Motor Vehicles nor adequate trained personnel to conduct such hearings.

The cases of Rivas v. Cozens and Rios v. Cozens are currently on appeal and pending before the United States Supreme Court to resolve the conflicts between the cases.

Pending the decision of the United States Supreme Court, the Department of Motor Vehicles is placed in a difficult and untenable position in administering existing provisions of law because of these circumstances. Thus, it is necessary that this act, which is intended to specify what course of action should be taken by the Department of Motor Vehicles until such decision is rendered, go into immediate effect.

DEPARTMENT OF MOTOR VEHICLES OF CALIFORNIA *v.* RIOS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

No. 72-686. Decided February 26, 1973

Since it is not clear whether the California Supreme Court judgment reversing the lower court is based on federal or state constitutional grounds, or both, and therefore whether this Court has jurisdiction on review, that judgment is vacated and the case remanded.

Certiorari granted; 7 Cal. 3d 792, 499 P. 2d 979, vacated and remanded.

PER CURIAM.

Petitioner, a California motorist, was involved in an automobile collision on March 18, 1971. Both drivers filed accident reports with the California Department of Motor Vehicles as required by the California Financial Responsibility Laws. Without affording petitioner a hearing on the question of potential liability, and based solely on the contents of the accident reports, the Department found that there was a reasonable possibility that a judgment might be recovered against petitioner as a result of the accident. Since petitioner was uninsured and could not deposit security, his license was suspended. The Supreme Court of California reversed, holding that prior to suspension "a hearing is required and that at such a hearing the licensee is entitled to review the reports or other evidence upon which the department contemplates determining that he is possibly responsible for the accident, and to present reports or testimony to establish his claim of nonculpability, all within reasonable due process procedures which the department may employ." *Rios* v. *Cozens*, 7 Cal. 3d 792, 799, 499 P. 2d 979, 984 (1972).

We are unable to determine, however, whether the California Supreme Court based its holding upon the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, or upon the equivalent provision of the California Constitution, or both. In reaching its result in this case, the California court relied primarily upon this Court's decisions in *Bell* v. *Burson*, 402 U. S. 535 (1971), and *Jennings* v. *Mahoney*, 404 U. S. 25 (1971), but also cited its own decisions in *Randone* v. *Appellate Department*, 5 Cal. 3d 536, 488 P. 2d 13 (1971); *Blair* v. *Pitchess*, 5 Cal. 3d 258, 486 P. 2d 1242 (1971); *McCallop* v. *Carberry*, 1 Cal. 3d 903, 464 P. 2d 122 (1970), and *Cline* v. *Credit Bureau of Santa Clara Valley*, 1 Cal. 3d 908, 464 P. 2d 125 (1970), which apparently were premised upon both the state and federal provisions. In addition, the court in *Rios* specifically overruled its own prior decisions in *Orr* v. *Superior Court*, 71 Cal. 2d 220, 454 P. 2d 712 (1969), and *Escobedo* v. *State of California*, 35 Cal. 2d 870, 222 P. 2d 1 (1950), which had upheld the procedures here under attack under both the state and federal provisions. Thus, as in *Mental Hygiene Dept.* v. *Kirchner*, 380 U. S. 194, 196–197 (1965), "[w]hile we might speculate from the choice of words used in the opinion, and the authorities cited by the court, which provision was the basis for the judgment of the state court, we are unable to say with any degree of certainty that the judgment of the California Supreme Court was not based on an adequate and independent nonfederal ground." We therefore grant the State of California's petition for certiorari, vacate the judgment of the Supreme Court of California, and remand the cause to that court for such further proceedings as may be appropriate. *California* v. *Krivda*, 409 U. S. 33 (1972); *Mental Hygiene Dept.* v. *Kirchner*, *supra*; *Minnesota* v. *National Tea Co.*, 309

U. S. 551 (1940); *State Tax Comm'n* v. *Van Cott*, 306 U. S. 511 (1939).

It is so ordered.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL concur, dissenting.

The Court is quite correct in saying that we have vacated and remanded cases from state courts which we took by way of appeal or certiorari, when we were uncertain whether the judgment rested on state or federal grounds. But *Minnesota* v. *National Tea Co.*, 309 U. S. 551, shows how unhappy that practice is.[1] Yet, even assuming it is the proper procedure, we should not use it to determine whether we should take a case. No case from a state court can properly reach here until and unless a federal question is presented. Our Rule 19 (1)(a) states as a standard for granting certiorari from a state court the following:

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

The Court in *Commercial Bank* v. *Buckingham's Executors*, 5 How. 317, 341, said that it was not enough

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[1] On remand the Supreme Court of Minnesota said:

"If we were in error, then assuredly the opportunity to be set aright should be cheerfully and thankfully accepted. Having so reëxamined them, we conclude that our prior decision was right. There is no need of further discussion of the problems presented for the former opinion adequately covers the ground. We think that the section of the statute here involved (L. 1933, c. 213, § 2 [b], 3 Mason Minn. St. 1936 Supp. § 5887–2 [b]), is violative of the uniformity clause of our own constitution." *National Tea Co.* v. *State*, 208 Minn. 607, 608, 294 N. W. 230, 231.

that a federal question had been presented to the state court but that "it must appear, by clear and necessary intendment, that the question must have been raised, and must have been decided, in order to induce the judgment." In *Brown* v. *Atwell*, 92 U. S. 327, 329, the Court ruled that it must appear that the decision of a federal question "was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it."

We have at times vacated and remanded prior to our decision to take or deny or to note or dismiss a case, so that the record can be clarified. See *Honeyman* v. *Hanan*, 300 U. S. 14, 25–26.

But we know in this case that a federal question was presented and ruled upon. We know that a state question was also presented and ruled upon. Where arguably "the judgment of the state court rests on two grounds, one involving a federal question and the other not," *Lynch* v. *New York*, 293 U. S. 52, 54, we do not take the case.

The ruling of the Supreme Court of California in the present case involving the revocation of a driver's license without a hearing, was as follows:

> "Petitioner relies on numerous recent cases in which the United States Supreme Court and this court have recognized that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest. (*Goldberg* v. *Kelly* (1970) 397 U. S. 254, 266; *Sniadach* v. *Family Finance Corp.* (1969) 395 U. S. 337, 342; *Randone* v. *Appellate Department* (1971) 5 Cal. 3d 536, 547.) This principle is applicable to a plethora of vital personal and property rights (see *Randone* v. *Appellate Department, supra*, 5 Cal. 3d 536, 548, fn. 8), but it has most frequently been applied in this state to in-

validate statutes affording a creditor prejudgment remedies against a debtor without prior notice or hearing (see e. g., *Blair* v. *Pitchess* (1971) 5 Cal. 3d 258; *McCallop* v. *Carberry* (1970) 1 Cal. 3d 903; *Cline* v. *Credit Bureau of Santa Clara Valley* (1970) 1 Cal. 3d 908).

"The rule explicated in foregoing cases is applicable to the instant circumstances." 7 Cal. 3d 792, 795, 499 P. 2d 979, 981.

It seems plain that the California Supreme Court decision rested on both federal and state grounds and therefore that the requisite showing of the presence of a controlling federal question which has been on the books since the first Judiciary Act, 1 Stat. 73, 85, has not been made.[2]

The opinion of the Supreme Court of California written by Justice Mosk was agreed to by all. It makes clear that both state and federal grounds were the basis of the judgment. The International Court of Justice that has only a case or two a Term might be tempted to seek a larger docket. Ours is already large; and it hardly comports with the messages of distress which have emanated from here for us to seek to gather in more cases that from the beginning have been sparsely and discretely selected

[2] Title 28 U. S. C. § 1257 presently provides as to certiorari:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . . .

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

from the state domain. *Cohens* v. *Virginia*, 6 Wheat. 264, raised a storm of protest against federal intrusion on state rights that has not yet subsided. *Minnesota* v. *National Tea Co.*, *supra*, taught me that it is wise to insist that cases taken from a state court be clearly decided on a federal ground and not, as here, on both state and federal grounds, save where the state and federal questions are so intertwined as to make the state ground not an independent matter. See *Enterprise Irrigation District* v. *Canal Co.*, 243 U. S. 157, 163–165.

I would deny this petition for certiorari.